

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
AWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

In re))	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,))	Case No. 03-46590-DML
Debtors.))	Jointly Administered

STIPULATION AND AGREED ORDER BY AND BETWEEN MIRANT AMERICAS ENERGY MARKETING, LP AND THE NEW YORK INDEPENDENT SYSTEM OPERATOR RESOLVING (I) THE MOTION OF THE DEBTORS AS IT RELATES TO THE NEW YORK INDEPENDENT SYSTEM OPERATOR FOR AN ORDER ENFORCING THE AUTOMATIC STAY AND DIRECTING THE TURNOVER OF PROPERTY OF THE ESTATE AND (II) CERTAIN OTHER MATTERS

Mirant Americas Energy Marketing, LP (“MAEM”) and the New York Independent System Operator (the “NYISO” and, together with MAEM, the “Parties”) enter into this Stipulation and Agreed Order (the “Stipulation”) resolving (i) the Motion of the Debtors as it relates to the NYISO for an Order Enforcing the Automatic Stay and Directing the Turnover of Property of the Estate (the “Turnover Motion”) and (ii) certain other matters.

RECITALS

A. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the “Petition Date”), Mirant Corporation (“Mirant”) and certain of its affiliated debtors, including MAEM (collectively, the “Initial Debtors”), filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the

“Bankruptcy Code”).¹ From time to time thereafter, certain of Mirant’s other affiliates have filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “New Debtors” and, together with the Initial Debtors, the “Debtors”).

B. On July 15, 2003, this Court granted the Initial Debtors’ motion for an order requesting that their bankruptcy estates be jointly administered. From time to time thereafter, the Court entered orders approving joint administration of the chapter 11 cases of the New Debtors with those of the Initial Debtors. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. On July 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors’ committees; one for the Debtors (the “Mirant Committee”) and the other for Mirant Americas Generation, LLC (the “MAGI Committee” and, together with the Mirant Committee, the “Creditors’ Committees”).

D. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the Official Committee of Equity Security Holders of Mirant Corporation (the “Equity Committee” and, collectively with the Creditors’ Committees, the “Committees”).

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

E. The NYISO is a non-profit organization that, among other things, administers a wholesale market for electricity in the state of New York. To balance supply and demand, the NYISO operates a bid-based commodity market in which power is purchased and sold on the basis of competitive bidding (the “Market”).

F. MAEM, a debtor and debtor-in-possession herein, purchases and sells energy and ancillary services through the NYISO. Prior to the Petition Date, the NYISO and MAEM entered into various agreements for the purchase and sale of energy and ancillary services (collectively, the “Agreements”), each of which incorporates and is governed by the NYISO Open Access Transmission Tariff (the “NYISO OATT”) and the NYISO Market Administration and Control Area Service Tariff (the “NYISO Services Tariff” and, together with the NYISO OATT, the “NYISO Tariffs”) in effect as of the date of entry into each of the Agreements. The NYISO Tariffs, as amended from time to time, contain the scheduling, operating, planning, reliability and settlement policies, rules, guidelines, procedures, standards and criteria for market participants (the “Market Participants”), including MAEM.

G. Pursuant to the NYISO Tariffs, the NYISO settles transactions in the Market by Market Participants on a monthly basis, collecting net amounts owed and distributing those amounts to net creditors in the Market after deducting applicable fees and charges. With respect to MAEM, the netting has continued after the Petition Date in the ordinary course of the Parties’ business under the NYISO Tariffs and the Agreements. The NYISO has withheld approximately \$3,000,000 (the “Adjustment Holdback”) from amounts due to MAEM on account of prepetition services, such amount estimated to be the net amount to be due and owing by MAEM to the NYISO on account of future netting as authorized by the NYISO Tariffs and

the Agreements (the “Adjustment Claims”). The Debtors have disputed the NYISO’s right to withhold such amounts.²

H. The Debtors intend to continue to participate in the Market in the ordinary course of their business and to pay postpetition claims for energy and other products they purchase and receive payment for the energy and other products they provide to the Market after any appropriate netting in accordance with the NYISO Tariffs and the Agreements.

I. On September 4, 2003, the Debtors filed the Turnover Motion seeking, among other things, (i) to enforce the automatic stay to prohibit certain parties, including the NYISO, from effectuating offsets with respect to certain debts and claims incurred by, or owing to, MAEM in respect of energy purchases and sales made prior to the Petition Date and (ii) directing the turnover of any undisputed prepetition amounts owing to MAEM being withheld by the NYISO. To resolve the Turnover Motion as it relates to the NYISO and the other matters set forth herein, the Debtors and the NYISO believe that the terms and conditions of this Stipulation are in the best interest of the Debtors.

AGREEMENT

The Parties desire to settle the Motion and therefore agree that:

1. Upon approval of this Stipulation by the Court, the netting by the NYISO of amounts owing to MAEM on account of prepetition energy sales made by MAEM in the markets administered by the NYISO against prepetition amounts owing by MAEM for

² The Debtors estimate that the NYISO is also withholding in excess of \$5 million relating to a “Metering Dispute.” The Debtors dispute, among other things, the NYISO’s right to withhold such amounts and have initiated discussions with the NYISO regarding the resolution of such disputes. While the Debtors anticipate reaching a consensual resolution with the NYISO in the near term, in the event the Debtors are unable to resolve such disputes, the Debtors reserve all rights with respect thereto.

prepetition energy purchases made by MAEM in the markets administered by the NYISO is hereby provisionally authorized, subject to the provisions of paragraph 4 hereof.

2. The Debtors are authorized to continue to participate in the Market in the ordinary course of their businesses and in accordance with and subject to the terms of the NYISO Tariffs and the Agreements, including the provisions relating to security and credit support, and to pay invoices issued by the NYISO relating to postpetition transactions after any netting permitted under the NYISO Tariffs and the Agreements, which netting is hereby authorized and approved, subject to the rights of the Parties as set forth in the NYISO Tariffs and the Agreements.

3. Within three (3) business days after this Stipulation is approved by the Court, the NYISO shall pay an amount equal to the Adjustment Holdback to MAEM. In exchange for the return of the Adjustment Holdback and as adequate protection under section 361 of the Bankruptcy Code for the NYISO's unliquidated right of offset with respect to the Adjustment Claims, MAEM shall grant to the NYISO and the NYISO shall be entitled to: (a) a replacement lien on future amounts owed by the NYISO to MAEM (the "Adjustment Lien") and (b) enforce the Adjustment Lien, subject to the provisions of paragraph 4 hereof, by offsetting amounts owed by the NYISO to MAEM on account of Adjustment Claims immediately upon such amounts becoming due and payable in the ordinary course of business; provided however, that the aggregate amount of the offsets by the NYISO against such amounts shall not exceed in the aggregate the amount of the Adjustment Holdback plus any additional amounts owing from and after the date hereof to MAEM on account of prepetition services.

4. Each of the Committees shall have forty-five days from the date of entry into this Stipulation (the "Objection Deadline") to file an objection ("Objection") with this Court

contesting the relief granted herein, it being understood that nothing herein shall be construed to preclude the Debtors from (i) supporting the Committees with respect to any Objection or (ii) seeking further relief with respect to the matters set forth herein. If none of the Committees files an Objection or the Debtors fail to seek further relief solely with respect to the matters set forth herein by the Objection Deadline, each shall be forever barred from raising any objection to these matters. The entry into this Stipulation, however, shall not be deemed a waiver of any rights to contest the validity of any portion of the Adjustment Claims to the extent such rights are available under the terms of the Agreements or the NYISO Tariffs.

5. Should the Court sustain an Objection to the terms of this Stipulation, then this Stipulation shall be deemed to be null and void, and, except as otherwise ordered by the Court, the NYISO and MAEM immediately shall make such payments to the other as are necessary to return the parties to the status quo immediately preceding entry hereof (including the amount of the Adjustment Holdback). In that event, both the NYISO and MAEM shall retain all rights regarding the matters addressed herein, and the execution of this Stipulation shall be without prejudice to the assertion of any such right or to the taking of any position on any matter addressed herein.

6. This Stipulation shall constitute neither an assumption nor a rejection of any of the Agreements pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect thereto are expressly reserved.

7. This Stipulation is without prejudice to any legal position or argument of, or any claim, demand, action or cause of action of the Debtors against any party, and all such legal positions, arguments, claims and disputes, and all rights and defenses in respect thereof, are expressly preserved. Accordingly, this Stipulation shall not be admissible by any party other

than the Debtors in these chapter 11 proceedings or any future litigation related to these proceedings, for any purposes, except to effectuate or otherwise enforce the terms of this Stipulation and as a resolution of the Turnover Motion.

8. The Parties reserve all rights and remedies against all Market Participants provided for under the NYISO Tariffs and the Agreements, including the right to seek repayment of any of the claims authorized to be set-off or paid provisionally as a result of the entry into this Stipulation.

9. The Court shall retain sole and exclusive jurisdiction with respect to any matters relating to this Stipulation.

10. The Stipulation shall be effective only upon approval by the Court.

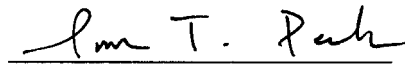
IT IS SO ORDERED.

Dated: January 28 2004

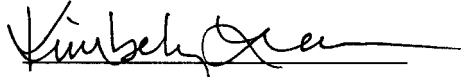


HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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